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WENTWORTH F. GANTT
Managing Editor

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The matter contained in this publication, unless otherwise stated, will not be binding upon the Society; and it should be understood that any opinions expressed in articles published herein are the opinions of the authors of the articles, respectively, and are not promulgated by the Society.

Message from the President

To the Members

As the curtain rises upon the new year, we find the world stage set for events of the most fateful significance for everyone of us, wherever we may be and whatever we may be doing. We are confident that history will record 1944 as the year of military decision, but we fervently pray that total victory may come sooner and at a lighter cost than we dare to expect. The freedom loving peoples of the world are now unified in war strategy, and are well equipped and fully mobilized for our all-out offensive. Yet we must realize that probably most of our fighting still remains to be done. Nearly all of the rehabilitation and reorganization of a war tortured world lies ahead of us.

Each one of us living in this turbulent period inevitably is being called upon for his utmost contribution toward the winning of the war and the rebuilding of civilization. The ultimate transition forward to an enduring peace economy will involve problems more difficult and all embracing than the human mind can visualize.

Let us all continue to reach out for whatever responsibility we can assume and whatever active part we can play in this vast program of war and peace. Let us all resolve that our efforts, individually and collectively, will prove worthy of the valor and idealism of our combat forces who are daily making every sacrifice on the field of battle in the faith that their own reward will be the assurance of a better world for all who survive.

SAUL LEVY,
President.

January 1, 1944.

STATE SOCIETY ACTIVITIES.

Calendar of Events

January 10—Regular Meeting of the Board of Directors.

January 10—7:45 P.M. Society Meeting. Subject: **Federal Taxation.** Location: Engineering Auditorium, 29 West 39th Street, New York City.

February 14—Regular Meeting of the Board of Directors.

March 20—Regular Meeting of the Board of Directors.

March 20—7:30 P.M. Society Meeting. Subject: To be announced. Location: Waldorf-Astoria Hotel, Lexington Avenue and 49th Street, New York City.

No February Meeting

As provided in the By-Laws of the Society, the Board of Directors has again dispensed with the February Society meeting because of the fact that members will be under extra heavy pressure during that month.

The next regular meeting of the Society is scheduled for March 20, 1944.

1943 Year Book

The 1943 Year Book is now in the hands of the printer and will be distributed to the members as soon as printed.

Hugh M. Anderson

Hugh M. Anderson, a member of the Society since December 1910, passed away on December 23, 1943.

Herbert J. Hamilton

Herbert J. Hamilton, an honorary member of the Society since March 1942, passed away on December 28, 1943.

Henry W. Hunt

Henry W. Hunt, a member of the Society since October 1939, passed away on January 9, 1944.

The Society has suffered a great loss in the passing of these valued and esteemed members.

PROFESSIONAL COMMENT

Revision of Gasoline Rationing Regulations Applicable to Accountants

The following is reprinted from the December issue of the Certified Public Accountant of the American Institute of Accountants.

Revised annotations to gasoline-rationing regulations, issued for the guidance of war price and rationing boards, now provide that accountants may be eligible for "preferred mileage" ("C" coupons) to permit travel required for the purpose of preparing inventory schedules and labor, production, and material cost records for essential establishments; or for performing other accounting services essential to the operation of such establishments. A note adds that preparation of tax reports and financial statements for stockholders are not, of themselves, eligible services; but indicates that preferred mileage may be allowed when, in order to prepare tax reports and financial statements, an accountant must assemble and audit accounts or records.

In November members of the American Institute of Accountants reported that, under statements of policy recently issued by the Office of Price Administration, local rationing boards were refusing to recognize as preferred mileage, mileage driven by public accountants for the purpose of auditing accounts in conjunction with the preparation of financial statements or tax returns by essential establishments. Conferences between OPA officials and Institute representatives have since resulted in clarification of the situation by means of the following annotations to which reference is made above.

"Essential establishments" are defined by OPA in section 1394.7706 of Regulation 291, which reads as follows:

"Sec. 1394.7706. *Preferred Mileage.* The mileage driven in a passenger automobile or motorcycle by the owner or a person entitled to the use thereof, necessary for carrying out one or more of the following purposes, shall be deemed preferred mileage: . . .

"(o) By a worker, including an executive, technician or office worker . . . for necessary travel to, from, within or between the establishments or facilities listed below, for purposes necessary to the operation or functioning of such establishments or facilities. . . .

"(3) Industrial, extractive or agricultural establishments essential to the war effort, including: plants or establishments engaged in the extraction, production, processing, or assembling of any aircraft, motor vehicle, ship, marine equipment, armament, implement or engine of war, or necessary part thereof; or of any raw, semi-processed or finished materials, supplies or accessories necessarily used in the manufacture thereof; or of tools, machinery or appliances essential to the manufacture or use thereof; or of munitions or fuel; or of essential medical supplies or essential food or clothing."

TIME SAVING PRACTICES FOR ACCOUNTANTS' OFFICES

The following is a list of some of the time-saving practices that have been put in effect recently in many accounting offices, as determined by a questionnaire survey made by the Committee on Accountants' Office Procedure. The Committee believes that it is worthwhile, in connection with the present emergency, to present them to the accounting profession in order that its members may, if they choose, adopt those which appear feasible provided they have not already done so.

1. **Employment Practices.** Young women are being employed as junior or semi-senior accountants as replacements for unavailable young men. After adequate training has been given to young women they generally do satisfactory work.

2. **Staff Assignments.** During periods where unassigned time exists, staff men and women fill in the prior year comparative figures and draw up pro-forma outlines of reports as well as comments in order to save time when the audit is actually made. Members of the report department sometimes perform this function.

Attempts are made to assign men to engagements near their homes, where possible, to cut down traveling time and the resultant fatigue and thereby prevent the impairment of their efficiency.

Rotation of staff men has been eliminated in some instances in order to reduce training to a minimum.

3. **Handling Engagements.** In slack periods ways and means have been found to do audit work prior to the close of the client's fiscal year. For example, audit programs and papers have been reviewed by partners and supervisors with assistants and parts of the work selected which could be done prior to the busy season.

Audits of companies engaged in war production work in some cases have been attended to first, with audits for those clients whose businesses are non-essential being deferred, where possible, to dates after the busiest part of the winter season.

Instead of permitting manpower to be dissipated on out-of-town work, arrangements have been made for correspondent accountants to handle such work. There is thus a saving of transportation time, service and expense.

Prior to the war most accountants have observed the clients' office hours. Under present conditions it has been possible in some cases to arrange for access to offices and records at times not within the clients' hours.

4. **Accountants' Reports.** Numerous time-saving practices have been instituted in connection with accountants' reports, namely:

Reducing to a minimum the number of copies of reports submitted to each client.

Mailing reports to clients unless delivery by hand is essential.

Substituting brackets for red figures.

Eliminating dots extending from the written material in the report to the related figures.

Eliminating decimal points and cents from financial statements where possible.

Using dictaphone equipment in the preparation of reports and for purposes of making excerpts from long contracts, minutes of meetings, etc.

Using adding and calculating machines in proving reports.

Photostating tax returns instead of typing them.

Typing, where practicable, one extra copy of a report to a client for use in drafting the report for the succeeding year.

Issuing quarterly, instead of monthly, reports on continuous audits, subject to the client's approval.

Restricting statements in reports to only those exhibits or schedules which are essential, and commenting only on those items which are of utmost importance for the management to note and take action thereon.

5. **Payroll Procedures.** Salaries or wages are being paid by check only. Payrolls are being paid on a monthly basis, with a semi-monthly payment on account and with payroll deductions being made only once in a month.

6. **Office Records.** Reviews made of Accountants' bookkeeping systems have disclosed that duplications and minor inefficiences can be eliminated. Heretofore, these inefficiencies have been permitted to exist because they were relatively unimportant and no one took time to correct them until war conditions and shortage of manpower changed their relative importance.

Review of the accountants' filing system has in several cases resulted in changes which have meant a saving of staff time.

The Committee in submitting this list is not recommending that all such practices be adopted. It is our opinion that each practicing accountant or firm should pass on the merits of the suggestions and adopt those that appear feasible and practical.

Additional suggestions and comments will be appreciated by the Committee and will be considered for a supplemental report.

SECURITIES AND EXCHANGE COMMISSION RELEASE

Accounting Series Release No. 46, December 9, 1943

The Securities and Exchange Commission today announced the adoption of amendments to Rules 5-04 and 12-06 of Regulation S-X. On December 22, 1942 the Commission adopted comprehensive amendments to Regulation S-X designed to simplify and shorten reports required to be filed by registrants by permitting under designated conditions the omission or partial omission of certain schedules. The Commission's experience with these amendments has not been entirely satisfactory. The present revisions are designed to secure with a minimum burden and expense certain information deemed essential relating to property, plant, and equipment under designated conditions. While the rules as amended call for the filing under certain circumstances of information with respect to property, plant, and equipment not now required, the present requirements relating thereto are less than those existing prior to December 22, 1942.

As amended, Rule 5-04 permits the omission of Schedule V. Property, plant and equipment, if the total of such assets at both the beginning and end of the period does not exceed 5% of total assets (exclusive of intangibles) and if neither the additions nor deductions during the period exceeded 5% of total assets (exclusive of intangible assets). The amendment to Rule 12-06 provides that, in case the additions and deductions columns are omitted from Schedule V, as permitted by Note 3 of Rule 12-06, the total of additions and the total retirements and sales shall be given in a footnote to the schedule.

The text of the Commission's action follows:

The Securities and Exchange Commission, acting pursuant to authority conferred upon it by the Securities Act of 1933, particularly Sections 7 and 19(a) thereof, and the Securities Exchange Act of 1934, particularly Sections 12, 13, 15(d), and 23(a) thereof, and deeming such action necessary and appropriate in the public interest and for the protection of investors and necessary for the execution of the functions vested in it by the said Acts, hereby amends Regulation S-X as follows:

I. The text of Rule 5-04 following the caption, Schedule V. Property, plant, and equipment, is amended to read as follows:

"The schedule prescribed by Rule 12-06 shall be filed in support of caption 13 of each balance sheet, provided that this schedule may be omitted if the total shown by caption 13 does not exceed 5% of total assets (exclusive of

intangible assets) as shown by the related balance sheet at both the beginning and end of the period and if neither the additions nor deductions during the period exceeded 5% of total assets (exclusive of intangible assets) as shown by the related balance sheet."

II. Rule 12-06. Property, Plant, and Equipment, is amended by changing Note 3 to read as follows:

"The balance at the beginning of the period of report may be as per the accounts. If neither the total additions nor the total deductions during the period amount to more than 10% of the closing balance and a statement to that effect is made, the information required by Columns B, C, D, and E may be omitted provided that the totals of Columns C and D are given in a footnote and provided further that any information required by Notes 4, 5, and 6 shall be given and may be in summary form."

Effective December 9, 1943.

Announcement of

1944 PRIZE ESSAY CONTEST

The Board of Directors of the Society has authorized the Committee on Publications to conduct a prize essay contest, the essays to be on a subject of interest to the accounting profession and suitable for publication in The New York Certified Public Accountant. Prizes in the amount of $150 for first prize, $100 for second prize, and $50 for third prize are offered.

The general rules of the contest are as follows:

All papers shall be original and the manuscript shall be typed in duplicate on 8½ x 11 stationery, double or triple space typing, and should not be more than 5000 words.

★

The name of the individual submitting the paper should not appear thereon, nor should there be any other means of identifying the manuscript, which should be accompanied by a covering letter giving the contestant's name and address.

★

When submitted to the judges, each manuscript will be given a key number of identification.

★

Manuscripts should be forwarded to The Managing Editor of The New York Certified Public Accountant, 15 East 41st Street, New York 17, N. Y., on or before May 15, 1944. Awards will be announced as soon thereafter as possible.

★

All papers submitted shall become the property of the New York State Society of Certified Public Accountants and shall be available for publication in The New York Certified Public Accountant. The decision of the judges shall be final as to what papers may be entitled to prizes.

Review of the Tax System of the State of New York and Proposals for a Revision

By ROLLIN BROWNE

YOUR State Tax Commission has been singularly honored this evening. Your Society has been prolific with its invitations to—and lavish in its entertainment of—your natural enemies, the tax collectors.

We have an unpopular job. Whenever we do right—if we ever do—well, that's the least that could be expected of us. And whenever we do wrong—which conceivably could happen—then God help us!

Yet we dare not—we simply can not—even try to change all that. We must go about our business apparently oblivious of criticism and praise alike.

I know just how taxpayers and their representatives feel about taxes. For years, I worked on your side of the desk. I viewed the general run of taxes as a necessary evil. Some, I recognized as a patriotic duty—others, as instruments of wild-eyed and long-haired so-called social reform.

Now that I have moved around to the other side of the desk, I have found that, viewed from this new angle—they look just the same as they always did.

And I am not going to try to popularize taxes. May the day never come when the independent, freedom-loving people of this country become so spineless as even to pretend to like to pay taxes.

But, like them or not, all of us must pay taxes, and it is the job of the tax commission to make us pay them. And although our State tax officials must not and will not court your favor, they should and will do their best to perform their duties with such fairness and justice, under the law, as to win and retain your respect.

Every one of them knows it is not his duty to collect the biggest tax he can from every taxpayer. It is his duty to investigate and determine—hew to the line of the law, and let the chips lie where they fall. He must be more of a common law judge than a chancellor. The only equity he can administer is that which is written into the statute. He must take the law as the Legislature, in its wisdom, has written it. He may not, in the guise of administration and interpretation, attempt to amend its apparent defects.

That does not mean that a tax law, or any other law, must always be interpreted according to its literal language. Custom, business practice and common sense are not taboo.

Nor are courtesy and patience. But our tax officials have just as much right to expect those civilized traits to be exercised *toward* them, as you have to demand that they be exercised *by* them.

That brings me to a consideration of a peculiar brand of louse. I'm referring to the man who, whenever some tax official disagrees with him, or even just fails to agree with him immediately, runs straight to the official's superior with a scurrilous personal attack on his mentality and his motives. Here's how bad it is, sometimes.

The Director of a Bureau writes to a taxpayer raising some question or asking for information, whereupon the gentleman addressed flies into a rage and refuses to reply, but

Presented at the December 13, 1943 meeting of the Society.

indicts a bitter denunciation and sends it to me. Or often, another count is added to the indictment, directed at the entire Commission, and it is sent to the Governor.

Won't you gentlemen please advise all such—when they come to your notice—how to proceed? You know, and I know, how such matters should be handled. Any one of you, I am sure, would argue your case out with the official in charge of it, and then if you felt that his decision was wrong, you would tell him so and request him to submit the question to higher authority, and arrange for a hearing there.

Our policy in Albany today is this. The Governor refers any such complaint to me. I refer any such complaint to the Bureau Director, and so on.

So, don't try to take your case out of the hands of the official charged with the duty of handling it. If a Bureau Head errs, you have your right to apply to the Commission for a revision—and on that petition you usually can have either a formal or an informal hearing, or both, as you desire. And if the Commission errs, as it often will, you have your rights in the courts.

We members of the Commission know our Bureau Heads. We have confidence in them and we rely on them. They are sincere, conscientious, capable career men, and they know their jobs. Of course, they are not infallible. We sometimes disagree with them and, when we do, it is our duty to overrule them, just as the courts overrule us when we go wrong.

I call on you accountants to help us build up and maintain the confidence and self-respect of the entire personnel of the Tax Commission, from top to bottom.

There is only one reservation I want to make to what I have said about trying to go over the head of the official handling your case. If ever you believe or have reasonable grounds to suspect any dishonesty, it then will be your duty to bring the matter to my attention—or if I am the suspected one—to the attention of the Governor. Any such charge always will be given the most careful consideration, every effort will be made to protect the informant, and he will earn the gratitude of the State.

Now, a few words in general about our ambitious program of tax revision. Most of you know something about our proposed revision of the Article 9-a Franchise Tax, and you will hear more about it tonight. I just want to ask you all to study our report to the Governor. It states precisely, not only what we want to do, but why we want to do it.

As a private lawyer, there were a few things I never could quite comprehend about Article 9-a, and a few others I never could condone.

The worst feature, in my opinion, was the attempt to distinguish between ordinary business corporations, holding corporations and investment trusts, by rigid, technical definitions, and to make no flexible provision for the many corporations which fall partly in two or all three of those classifications. I thought that every corporation should be taxed as a business corporation to the extent it is such, as an investment trust to the extent it is such, and as a holding corporation to the extent it is such.

I thought also that there was no sound reason for allowing a corporation's investment policy or activities to influence the allocation of its business income.

Then there was Section 214-a which made a successor corporation —although a *bona fide* purchaser for value—liable for franchise taxes its predecessor should have paid.

Finally, there was the "timing" feature. The tax accrued on November 1st, and covered the *succeeding*

12 month period, but was measured by the income of the *preceding* calendar or fiscal year.

I found that others, in and out of the Tax Commission, felt pretty much as I did about those points, so I gathered together a group of competent, experienced tax men and we went to work.

The Chairman of your Committee on Taxation, Mr. Harrow, and other private lawyers and accountants, gave freely of their time and talents, and a very large share of the credit is due them.

There are 25 names signed to the report, including tax officials, other State officials and private practitioners. It is most gratifying—and should be reassuring as well—to find complete unanimity of opinion among such a group. The explanation is simple—all of us had the same aims—not to increase or decrease revenues, but to distribute the existing burden more logically and equitably, and to attract corporate business to the State.

We have not overlooked other taxes. In the personal income tax, we shall strive for simplification. In the stock transfer tax, we are examining the effect on low-priced shares. In the estate tax, we want a simpler, more orderly procedure and administration. In the utility field, we are re-examining most critically the special franchise and sub-metering. And so it goes. We shall not try to do it all at once. The job of tax revision will never end. We must keep at it constantly, so as never to fall too far behind the times or the temper of the people.

I am not an accountant, and I don't try to pose as one. I never could understand the difference between "debit" and "credit." Whenever I tried to use one of those terms, I usually found that I was working on the wrong side of the balance sheet. So I always recognized the essential part accountants play in the tax game. As a lawyer, I found I could do a better job—and earn my fee more easily—if my client had a good accountant to work with me. Again, viewed from the other side of the desk, I have the same opinion of your profession.

State *taxes* are insignificant—sometimes too small by comparison to bother about. But tax *policy* is of vital concern everywhere in this country today. Our efforts in Albany will be to adopt *policies* which will be so sound that they simply cannot be ignored in that larger field where *taxes* are such a crushing burden. Your Society can, and I know it will, be of the greatest help to us in achieving that aim.

Proposed Changes in Allocation Procedure Under the Corporation Franchise Tax

By SPENCER E. BATES

IT would be somewhat of an exaggeration to say that the success or failure of a corporation income tax depends upon its allocation provisions. But certainly these provisions are a major factor in determining the equitable distribution of the tax burden and its administrative feasibility. Allocation is an issue in every state corporation income tax, and the writings on this issue by tax experts in the various states would probably total up to volumes. And yet no one, in my opinion, has found a perfect formula for allocating the business and investment income of corporations. Indeed there is no perfect formula. The best that we can seek is a workable formula that will not perpetrate extreme injustice, that will not exercise a regulatory effect adverse to the interests of the State and that will not make administration of the corporation income tax too complicated.

The Tax Advisory Committee which was formed last July by Mr. Rollin Browne, the president of the New York State Tax Commission, and of which the chairman of your Tax Committee, Mr. Harrow is a member, has given much thought to the problems of allocation under the New York corporation franchise tax. Based upon this Committee's report, the Tax Commission will recommend to the legislature of the State the adoption of a completely new franchise tax allocation formula, embodying the so-called Massachusetts formula for business income, and containing an altogether new formula for allocating investment income.

We are not proposing to change New York's method of allocation simply for the sake of change. As you all know, the textbooks on tax administration all contain the maxim that a bad tax provision to which the taxpayers have become well accustomed may often cause less dissatisfaction to both taxpayers and administration than a better provision to which the taxpayers and the administration must accommodate themselves with considerable trouble. But there are limits to the application of this maxim and in the case of the New York allocation formula those limits have been reached. The present New York formula works so badly that the inconveniences of changing to a much better formula are well warranted.

As you all known New York's present system of allocation is based upon tangible property, receivables, and stock. The amounts of each of these three factors attributed to the State are added together and this sum is divided by the sum of total tangible property, total receivables and total stockholdings. The worst feature in this formula is the stock factor. In many cases a business corporation's investment in stock may outweigh its accounts receivable and its tangible property holdings, so that its business income is actually being allocated by the distribution of its investment portfolio. Even where the stock factor may not outweigh the others, it influences allocation of business income. To my opinion this is a fantastic distortion. A corporation's investment policy should never be a factor

Presented at the December 13, 1943 meeting of the Society.

determining the allocation of its business income.

The receivables factor too often operates inequitably. It is particularly unfair to manufacturing corporations since it provides that bills and accounts receivable arising from the sale of goods must be allocated to New York simply because the goods were manufactured within the State, even though such goods are stored outside the State subsequent to their manufacture and are sold through out-of-State offices to out-of-State customers. Furthermore, bills and accounts receivable may distort the allocation of a corporation's income because of variation in the credit terms granted by the corporation in New York and in other states. Finally there is the consideration that if the corporation conducts its business on a purely cash basis, such business produces no accounts receivable and the allocation formula applied to that corporation must lack any measure of the selling activity of the corporation.

We propose, for allocating business income, to replace this distorting New York formula by an adoption of the so-called Massachusetts formula. This formula, as you probably know, is based upon tangible property, receipts, and payrolls. A percentage is derived for each of these three factors. The three percentages are then added and divided by three, and this average percentage is the allocation fraction for the corporation's business income. Ten states have already uniformly adopted this Massachusetts formula and a number of others utilize formulas very similar to it.

If the legislature accepts our recommendations for allocating business income, the following changeovers will result:

1. Use of the tangible property factor will remain unchanged.

2. Receipts from sales and services will be substituted for receivables. The basis for attributing receipts to the states, however, will not be that used by other states employing the Massachusetts formula, but will be a carry-over from the present New York receivables factor. Receipts will be attributed to New York as receivables now are in practice—when the merchandise is located within the State at the time of the receipt of the order, and when orders are received and accepted in the State for merchandise not located at any place outside the State where the taxpayer conducts a permanent and continuous place of business. In addition receipts from services performed within the State, from rentals or royalties from property situated within the State, from the use of patents and copyrights within the State, and all other business receipts earned within the State, will be attributed to New York.

3. In place of the present stock factor, we shall substitute payrolls. Compensation of general executive officers is to be excluded from our definition of "Payrolls."

Our present statute permits allocation only when the corporation maintains a regular place of business outside the State. We intend to continue this requirement for the allocation of business income, but—and I consider this one of the most far reaching of the reforms that we propose—we will permit allocation of investment income by the formula I am about to discuss to each and every corporation, whether it conducts its business in several states or exclusively in New York.

When our committee bent itself to the problem of selecting or determining an allocation formula for investment income, it discovered that the tax experts had practically

ignored this subject. After much careful thought the committee evolved an allocation formula for investment income which it believes is not only suited to New York, considering this State's special position as the natural home of many kinds of financial and investment institutions, but is also suitable for a uniform adoption by other states. The Committee frankly flatters itself that its decisions on this matter constitute a valuable contribution to tax policy and an important forward step in state corporation taxation.

We propose to allocate investment income according to the origin of such income.

The origin of corporate dividends and bond interest we consider is best established by the allocation percentages applied to the corporations that produce such dividends and interest. Therefore we propose to require each taxpayer to list its holdings of corporate stocks and bonds and to distribute such holdings within and outside New York in accordance with the allocation percentages applied by New York to these corporations in the preceding year in determining their minimum capital tax liability. This is somewhat similar to the allocation procedure now applied to the stock factor under the New York tax law. Since the corporations that own the stocks or bonds would not, in the normal course of business, be informed of the allocation percentages applied to the issuing corporations, the Tax Commission will probably issue or publish each year a list of corporate taxpayers, giving in such list the allocation percentages of corporations subject to the New York franchise tax. In order to accomplish this, it will be necessary to amend the secrecy provision of the present statute and we have accordingly made such recommendation.

If a corporation holds state and local bonds, the issues of New York State and its municipality will be added to the total of stocks and bonds attributed to New York, while the total of its state and local holdings will be added to the total of its corporate holdings. Division of securities attributed to New York by total security holdings (exclusive of Federal bonds) will give the corporation's investment allocation percentage. This investment allocation percentage will be used to allocate not only dividends, and interest on corporate and municipal bonds, but also the interest on any Federal bonds held by the taxpaying corporation. Should a corporation hold only Federal bonds, without any corporate and State and local securities which would provide it with an investment allocation percentage, the interest on the Federal bonds will be allocated by its business allocation percentage.

We have recommended that a franchise income tax should not be applied to dividends from subsidiary shares—and we have defined a subsidiary as a corporation 50% or more of whose stock is held by the taxpaying corporation. In place of the income tax on such subsidiary dividends, we are recommending a special low rate capital tax on the allocated value of subsidiary shares. This requires us to establish still a third allocation formula—for subsidiary shares. Such shares will be attributed within and without New York in the same way as shares held for investment purposes. The preceding year's allocation percentage established for the subsidiary corporation will be applied to its shares as held by the taxpaying corporation.

A business allocation percentage, as determined by the Massachusetts' formula, will be applied to corporation's gross business income. Its

investment allocation percentage, calculated as I have previously described, will be applied to its gross investment income. The gross business income so allocated to the State and the gross investment income so allocated to the State will then be added together, and their sum will be divided by the corporation's gross income. This division will give the corporation's combined allocation percentage which will then be applied to its entire net income (less subsidiary dividends). Thus we will obtain a figure for net income allocated to New York. This may sound to you like a roundabout procedure, but it really provides the simplest of all possible methods for actually calculating allocated business income and allocated investment income under separate formulas.

We know that of 100,000 taxpaying corporations in the State, the tremendous majority — possibly as high a proportion as 90%—are primarily engaged in business activities and derive only inconsiderable proportions of their income from investment sources. We are going to allow those corporations, by an optional provision applying to any corporation that derives less than 25% of its gross income from investment sources, to allocate all of their income, if they wish, by the business formula. This will save them from having to make the rather complicated calculations sometimes involved in determining investment allocation. Use of this optional method may in particular instances cost the taxpayer a few dollars additional tax, in other cases it may cost the State a few dollars of tax yield. We believe that the compliance costs that will be saved by utilization of the brief business allocation formula for all income will induce most corporations to take this short-cut, and the State may win slightly or lose slightly in the aggregate if most of the taxpayers entitled to this short-cut use it; if there is a small aggregate loss to the State it will be warranted by the great benefit to the business community.

Similar considerations have dictated the inclusion of another optional arrangement. Any corporation that derives 85% or more of its income from investment sources can use its investment allocation percentage to distribute all of its income, thus saving it from having to calculate a business allocation percentage.

We are retaining the one mill minimum capital tax, but with a change in its base. Instead of applying the one mill rate to allocated issued capital stock, we propose to apply it to allocated capital employed in business and investment. Employed capital will be calculated as gross business and investment assets, minus current liabilities. The business assets will be allocated to New York by the business allocation formula previously described. The investment assets will be allocated by the investment allocation formula, with a proviso that not less than 15% of such assets be attributed to New York.

We recognize that there will be individual cases where the allocation procedure so far described would work injustice. To prevent inequities in such cases, we propose broadening the equitable adjustment provision of the present statute. In such cases, the Tax Commission will be authorized to adjust a corporation's business allocation percentage by excluding one or more of the factors contained in the general formula and/or by including one or more other factors such as expense, purchases, contract valuations minus special contract valuations, admissions or royalties, or by any other method to effect a fair and proper

allocation of the income or capital reasonably attributable to the State.

The proposed statute will permit, at the discretion of the Commission, the filing of consolidated reports similar to the provisions of the present statute. In determining the consolidated allocation percentage, intercorporate receipts and other such items would be eliminated.

Our recommendations regarding allocation will, if adopted by the legislature, improve New York's corporation franchise tax in four respects:

First. The tax will be made more equitable. I have already mentioned the distortions of the tax burden that the present method of allocation produces. These will be eliminated by a method which allocates business income according to the tried and tested Massachusetts formula and investment income according to an origin formula. Moreover, by adopting the Massachusetts allocation formula or business income, we are bringing the New York tax more closely into alignment with those of other states. Since non-uniformity of allocation along state corporation taxes is in itself a breeder of inequitable maldistribution of tax burden, so bringing the New York tax more into conformity with those of other states will of itself contribute substantially to greater justice in corporation taxation.

Second. Certain adverse regulatory effects of the tax will be eliminated. Heretofore it was to the interest of corporations doing business in New York, if they had any surplus funds available for investment, to invest such funds in the securities of corporations doing little or no business in New York, since thereby they reduced not merely investment income allocated to New York but business income as well. Thus New York's franchise tax was a factor in discouraging corporate investment in the shares and bonds of corporations doing business in New York. We were actually discouraging capital from flowing into New York business. That will be ended. So, too, the treatment of receivables under the present law discourages the establishment in New York of factories the output of which is shipped out and distributed from outside the State. Our tax law has been a factor operating against the development of manufacturing business in the State. That too will be ended.

Third. By providing separate investment and subsidiary allocation formulas, we are making it possible to bring investment trust and holding companies under a single uniform franchise tax. Gone will be those arbitrary demarcation lines that in the past discouraged many investment trusts from entering the State. Gone will be the arbitrary lines that made it so difficult for a holding company to establish itself as a holding company for tax purposes, and so discouraged holding companies from establishing themselves in New York. The allocation formulas and the rate structure that we propose for the franchise tax will henceforth treat every corporation as a business company to the extent that it is a business company, as an investing company to the extent that it is an investing company, and as a holding company to the extent that it is a holding company. Statutory demarcation lines where actual demarcations do not exist in practice make for harsh law. We are erasing these demarcation lines and this harshness from the franchise tax law.

Fourth. In spite of the complexity of the explanation that I have been giving you during the past quarter of an hour, we are presenting most of the corporate taxpayers of the State with a simplified allocation calculation. From 75% to 90% of our corporations will not have to go through the procedure of calculating a separate business allocation and a separate investment allocation and deriving therefrom a combined allocation percentage. Remember that option that is open to some 90% of the taxpaying corporations to allocate all of their income by their business allocation percentage. Those corporations that take advantage of this option will find that the calculation percentage under our proposed law is much simpler and involves fewer lines on their returns than the present procedure.

In closing, I wish to present you with a "Believe It or Not." Believe it or not, your Tax Commission this year set itself to the task of reforming the corporation tax law not for any purpose of pulling additional millions of revenue from the corporate taxpayers of the State, but purely and simply to give these taxpayers a fairer and simpler statute to comply with. It may be hard to believe such a thing of a State Tax Commission, but in this instance it really is so.

The Personal Income Tax Law

By Roy H. Palmer

WHEN your Chairman asked me what would be the topic of my address this evening, I didn't know on what I would speak but I knew it would be the income tax law so I told him to put it down to say I would speak on "The Personal Income Tax Law," knowing it would give me ample room to roam around wherever I saw fit.

If were to select a topic tonight I think I would suggest—at least for the first part of what I wish to say—such a topic as "What Can Be Done for the Taxpayer." Now you may not have guessed it, but I have a very warm sympathy for the taxpaying public at the present time. You may never have guessed that that quality existed in me when you have dealt with me in your cases before me; nevertheless, I have that warm sympathy for the burdens that they have to bear at the present time. They are very heavy. The number of laws that they have to know and analyze, the regulations which they must follow, the reports which they must prepare and make out and try to make with some accuracy, are sufficient to cause some to be very discouraged.

I read of one man recently who had written a letter to a friend saying that, after he had paid his taxes and the expenses of his home and bought some bonds and all the other good things of life, he really had nothing left; he felt almost like "throwing up the sponge" entirely. With that particular taxpayer I haven't too much sympathy because he had all the good things of life.

Commissioner Browne has suggested to you that we have in mind—or at least he and the Commission have in mind—simplification of the taxpayers' problems including, perhaps, simplification of the law and simplification of the methods of reporting so as to make it as easy as possible for the taxpayer under these trying circumstances. Of course the best relief which could be given to taxpayers at all times would be a reduction in taxes; but we all know that this, under present circumstances, is impossible. Therefore we must turn to other measures of relief.

Twenty-four years ago on October 15th I first entered the Income Tax Bureau: just after the first law had been passed and during the early stages of its organization. Your Isidor Sack preceded me by three or four months, I believe, in that organization. At that time the original income tax law as contained in a pamphlet of about sixteen pages; today that same law is contained in something over fifty pages.

That first law was patterned, as you know, after the Federal Revenue Act of 1918; and so far as it was thought wise at that time the provisions of the state law followed closely the provisions of the Federal act. Now many of the complications of our law are due to the fact that every time the Federal law has been amended, the state Legislature has felt it wise to amend its law to correspond to the Federal law.

Of course some of these complications have been brought about by need for revenue or need to broaden the base of the tax; and perhaps in very many cases these complications have been brought about by the necessity of plugging up those holes which certified public accountants and tax lawyers have driven in the simple law that was enacted in the

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first instance. We won't say any more about that, now!

The fact is, however, that the Federal law and, with it, the state law have become most complex, and in many cases very difficult to interpret and understand. As a matter of fact, it is stated that some of the provisions of the Federal act are understood only by the Treasury experts who drew them and they don't agree among themselves as to the interpretations. And so it would be very wise, perhaps, if it were possible that both Federal and state laws could be fully rewritten so that in some manner they could become intelligible—so that the average taxpayer could read and understand.

A few days ago I read a letter written by a taxpayer to an editor of a newspaper up in Albany, in which he complained of that very thing, and he asked why it was that tax laws could not be written in plain language that the average person could understand and apply. He gave a quotation from St. Paul—which I can't remember exactly—but it was to the effect that, what's the use of writing words—of what advantage is there in words and language—if they cannot be understood?; and I thought it was very apropos to the question.

But now I have wondered frequently if it would not have been better had New York State, in enacting its original income tax law, followed the example of Massachusetts and had written an entirely independent statute so that, every time the Federal law was amended, it would not be necessary to run to the Legislature to get an amendment of the state law, and so that we could have perhaps a little bit more independence of opinion and action. Nevertheless, there is advantage and considerable merit in conforming the two laws, since in that case the taxpayer would have only one law to interpret and understand, and the Federal precedents and regulations do make it simpler in the administration of the law.

It being impossible at the present time to rewrite the law entirely—although I believe that there is some move on to have Congress simplify the present revenue act, and I think your Association has taken some action in a resolution endorsing such a proposition—and as long as it is not a present matter, I assume that it is perhaps best if we go along trying to conform to the Federal law as much as possible. To that effect many suggestions have been made to Commissioner Browne and the other members of the Commission, and his body of advisers have certain amendments which would enable the state to conform more closely with the Federal than it does at the present time.

I might give you some of the suggestions that have been made. In doing so, I want to say that I am not going to express my own personal opinion as to the merit or demerit of any of them, nor to try to express the opinion of the Commission as to what action may be taken with respect to any of them. I am just putting them to you as suggestions that have been made.

The first suggestion would be to adopt the Federal treatment of capital gains and losses. Now I do not know which method is the more desirable, whether the Federal method is more favorable to the taxpayer or whether the state method would produce the more revenue. I am not concerned with that. I am concerned with the question, which is the better method for the use of the taxpayer; which would simplify his problems to the greatest extent?—and that is one of the suggestions which has been made. In connection with that same suggestion is the suggestion that the state should change its basic date or its basic

cost computation in order to conform with the Federal.

Now that has been objected to by some as having some constitutional question involved; but we are so far away from January 1, 1919, that that question ought not to be very serious, because most of the assets held on that date have been disposed of before this.

Likewise it would be helpful, perhaps, and it has been suggested that, if the basic date and basic value conformed to the Federal, the computation and the recording of depreciation would be much simplified for every taxpayer.

It has been suggested also that the treatment of stock dividends and stock rights might easily be made to conform to the Federal. Also the deduction for medical care expenses: the allowance could be increased under the state law to meet the amounts that are allowed under the Federal law.

As for the deduction of insurance premiums, which was one of the humanizing amendments suggested last year by Governor Dewey, the Federal law does not at present contain such a provision, but we have been led to believe that a suggestion has been made in Congress that the Federal law be amended this year to give such a deduction; and, if so, the two laws would there conform.

Another proposal is that non-business debts which have become worthless should be treated as capital losses, as under the Federal law; also that we should conform to the method of reporting income for the decedent for the period of prior-to-death, as is provided now in the Federal law. Of course there are certain differences which could not be reconciled, such as pensions, for the reason that the pensions of state and municipal employees are non-taxable under constitutional provisions; also the interest on so-called "tax-exempt" bonds for, as you know, the state may not tax the interest on Federal bonds, and we believe that the Federal Government has no power to tax interest on state and municipal bonds. Moreover, it would not be possible to coordinate the two laws so as to permit the deduction by state taxpayers of the Federal income tax from their state gross income because the high rates of tax, as you know, would simply defeat the state tax.

There have been other suggestions made for amendments for certain provisions of the state law in which the Federal law is not particularly involved; and I might just mention some of those. For instance, that the unincorporated business tax should be permitted as a deduction by individual taxpayers under the personal income tax law; that credit should be given to resident taxpayers for taxes paid to other states where that other state did not grant a credit to the resident of New York State under any reciprocal provisions.

It has been suggested that Section 360 relating to charitable contributions made by non-resident taxpayers should be clarified so that there would be no question that a non-resident contributing to a New York charity or religious organization should be permitted to make such a deduction regardless of whether or not that deduction was connected with income earned in New York State, thus encouraging contributions to New York organizations.

It has also been proposed that an allowance be made to resident taxpayers of deduction for alimony paid to a wife who is a non-resident, and likewise to allow a non-resident a reduction for alimony where the wife is a resident of the state and that alimony is includible in her gross income.

All of these suggestions are being given very careful consideration by

the Commission, but no decisions have yet been reached. Some of them—in fact many of them—might be very helpful in simplifying some of the problems of our taxpayers, and to that extent would ease some of the burdens under which they are laboring.

So much for these proposed amendments and for the suggestions for simplification of the law. We come now to that other suggestion of simplification of the method of reporting. Of course that means simplification of forms. As to that, I have nothing definite to say except that the Commission feels and believes that it is part of the duty of the Commission to see that every taxpayer should be given an opportunity to make his return with the least possible difficulty; that he should be able to make it out understandingly without being obliged to get advice and to pay for assistance.

Now we have not felt that our one form for reporting of individual incomes—our Form 201—was unduly difficult or complex. We have felt that it was less complex perhaps than Federal Form 1040, although those who have dealt mostly with Federal taxes and have become accustomed to using Form 1040 have sometimes expressed the thought that that form was better than ours. Suggestion has been made that perhaps the state should adopt a form, such as the optional Form 1040-A, which is a simple form in some ways. There are certain objections to that and, of course, there would have to be some adjustments on that to reconcile income with the state income.

Also there have been suggestions that we might make a form in which net income was reported as in the Federal return, with certain adjustments, and permit the taxpayer that very easy method of reporting. Then there have been suggestions of simplification of our present form along state lines.

All of these suggestions are being given consideration and careful thought, but it has not yet been possible to complete any such revision for the present year, although it is hoped that in the future we may be able to have some simplification which will meet the approval of the great majority of taxpayers who have small incomes.

I assume I have already overrun my time, but there are two matters of practice to which I would like to call your attention, and I will digress from the subject I have been talking about in order to bring these to you because I think they are important to you. In the past few months we have had many requests from employers for permission to use Federal Form W-2—the withholding form; withholding receipt—in lieu of our Form 105 for reporting salaries paid to employees. During the past week a ruling was issued which perhaps some of you may have seen, although I do not know that it has come into the services as yet—granting permission to employers to file copies of Form W-2. Of course we do not expect you are going to "rob" the Federal Government of its forms, but have them printed especially. However, that permission is conditioned, first, upon the stipulation that there shall be printed on those forms "New York State Income Tax" so that we will know when we see them what they are intended to represent; second, that there shall be printed thereon the marital status of the taxpayer; and, third, as a condition for their privilege, that the employer shall sort out and discard all those forms W-2 which are made out in accordance with the Federal law for amounts less than the personal exemption under the state law—that is, we do not want any of those who are under $1,000 for the single person or under $2,500 for the married person; and it is only under

those conditions we want you to use those forms because we cannot afford to have our Bureau and our files loaded up with the thousands of unnecessary informations on Form W-2 returns which are of no use to us.

The second matter of practice which I would call to your attention is an amendment to Section 374 of the tax law which was made by the Legislature in 1943 and which involves a question of applications for revision and claims for refund. I assume you have all studied that amendment and the regulations which have been put out interpreting it; but I want to call it to your attention because it is of vital importance to your clients that the procedure be followed to the letter.

Prior to the amendment, the law never provided that the Tax Commission might prescribe a form of application for revision, and so anything which looked like an application was accepted and frequently the Bureau wasn't sure whether it was an application for revision or not.

As for claims for refund, we did put out a Form 110—which the Commission ruled would be accepted as an application for revision. As a matter of practice in the Bureau, for many years we passed on those claims for refund in the audit division itself, denying them rather informally.

Now an application for revision under that law was never closed except by a determination of the Commission. As a result, there were many thousands of them which laid dormant. Taxpayers had taken no further step after the denial by the Bureau. This was criticized by Moreland Commissioner Robert M. Cunningham in his report to Governor Lehman a year ago, with the result that the Legislature amended the law. I explain this so you will know the background of it all.

Under the present law, an application for revision, or a claim for refund, must be filed on a form prescribed by the Commission. Such a combined form of application for revision and claim for refund has been issued under Form 113. That application will be reviewed in the Department and can be passed upon by the Bureau. The taxpayer will receive a decision from the Bureau. If he is not satisfied with it, he must file a Demand for Hearing within ninety days after that decision, otherwise the decision becomes final. That Demand for Hearing is Form 114, which may be had upon application. All those old cases, which were lying dormant, were closed out by the amendment which provided also that they would be closed within ninety days after the effective date of the law unless a Demand for Hearing was filed within that time.

Now this is somewhat of a technical procedure and we expect to deal with it as fairly as possible. Everybody will have every opportunity for a conference or for an informal hearing or a formal hearing if he follows closely the provisions of the statute. We would not wish to shut anyone out. Nevertheless, it is important that you know these facts, these regulations, and advise your clients properly.

It has been a great pleasure to be here tonight, gentlemen. It is not the first time, and I am grateful for your permitting me to partake of your hospitality and to take part in this gathering.

Modification of the Privilege Period Base of the Corporation Franchise Tax

By WILLIAM J. SHULTZ

AS you are aware, New York's present corporation income tax is a "franchise" tax, imposed on a domestic corporation "for the privilege of exercising its franchise in this state in a corporate or organized capacity," and on a foreign corporation "for the privilege of doing business in this state." Each year the corporations pay a tax for the privilege of exercising their franchises or doing business in the state for the space of a year. For reasons which date back to the Nineteenth Century, the "privilege year" for which corporations are taxed runs from November 1 to October 31. The accrual date of the annual tax is the first day of this "privilege year"—November 1.

This tax that accrues on November 1 of each year is based on the income earned by the taxpaying corporation during its preceding fiscal year, provided that fiscal year ended not later than the preceding June 30. If the corporation has a fiscal year ending July, August, September or October, then the tax is based on the income of the fiscal year before that one.

Although the accrual date of the tax is November 1, most corporations report their taxes, and pay half of the amount due, on the preceding May 15th, five and a half months before the tax accrues. Corporations with fiscal years ending during March, April, May or June report their tax four months after the close of the fiscal year.

These relationships are shown in Diagram 1.

Note the anomalies that result from this arrangement. A corporation whose fiscal year ends in July has no tax accrue on the income of that year until fifteen months later. For a calendar-year corporation, the accrual of its tax comes ten months after the close of its income year. Moreover, the provision of a May 15th payment date compels most corporations to pay their franchise taxes before they are legally due. Every May 15th tax payment is a prepaid tax. Should a corporation dissolve or leave the state after May 15th but before November 1—the beginning of its new privilege year and hence the accrual date of its tax—the state must refund the May 15th tax payment. New York tax liability, as reported on many corporate financial statements, is a distorting and misleading item.

New York's tax collections have suffered from this absurd relationship between "income years" and "privilege years." Corporations planning to dissolve or withdraw from the state time their dissolution or withdrawal so as to escape substantial tax liability—in some cases as much as the tax on two years' income. We have estimated that the state loses $1,000,000 or more revenue from this source every year.

We do have one partial plug in this loophole which prevents the tax loss from being greater than it is. Sec. 214-a of the Tax Law provides that where one corporation acquires the franchise or a major part of the actively employed assets of another corporation, the acquiring corporation is responsible for any unpaid tax on the other corporation's in-

Presented at the December 13, 1943 meeting of the Society.

come up to the preceding July 1. Obviously, this is only a partial plug. And it often works inequitably, since acquiring corporations sometimes fail to take this liability into account in negotiating acquisition terms.

* * *

Our first step to correct these weaknesses in the corporation franchise tax law has been to recommend the passage of a special "dissolution and withdrawal tax." This proposed tax will be imposed *on* or *for* the privileges of dissolution in the case of a domestic corporation, and of withdrawal from the state after engaging in business therein in the case of a foreign corporation. It will be *measured by* all income not taxed under the present franchise tax up to the date of the corporation's dissolution or withdrawal.

* * *

This "dissolution and withdrawal tax" will plug the revenue leak produced by the present privilege period base of the corporation franchise tax, but it will leave untouched all the anomalies resulting from the non-coincidence of a corporation's "privilege year" and its income year. This brings us to our second corrective proposal—to make the "privilege period" of each corporation identical with its fiscal or income year, or with any part of a fiscal year. We are proposing that, beginning with December 1, 1944, the franchise tax will be paid by a domestic corporation "for the privilege of exercising its franchise in the state in a corporate or organized capacity for all or any part of a fiscal or calendar year," and by a foreign corporation "for the privilege of doing business in this state for all or any part of a fiscal or calendar year."

Under this proposal, the tax will accrue and become a liability of the corporation as of the last day of its fiscal or calendar year. The return will be made, and half the tax paid, on the following May 15th (or four months after the close of the fiscal year by corporations whose fiscal years end in March, April, May or June), as at present. These relationships are shown in Diagram 2.

With this revision in effect, there will no longer be any gap between the close of a corporation's fiscal year and a November 1 liability date of its tax. The tax on a year's income will become due on the last day of that year. If a corporation dissolves or withdraws from the state in the course of a fiscal year, the tax for the part of the year that it was in the state will become due on the date of dissolution or withdrawal. There will be no possibility of tax avoidance by dissolution or withdrawal.

* * *

Note that this revision leaves a gap from the close of a corporation's fiscal year on which it paid its 1943 tax, which may range anywhere from July 31, 1942 to June 30, 1943, and the beginning of its first fiscal year on or after December 1, 1944. No tax could be imposed on the income of this gap period under the present law, or the proposed revised law, or the proposed dissolution and withdrawal tax. This would represent two full tax-free years for most corporations, and three full tax-free years for corporations with fiscal years ending from July through October.

The State can not afford to lose the tax revenue represented by this gap, the corporations have no warrant for expecting two or three tax-free years, and we have no intention of allowing such a gap to go unplugged. The plug is a temporary "transition" tax to cover the incomes of these two or three years between the coverage of the present tax and the coverage of the revised tax. As a constitutional basis for this temporary "transition" tax, we are relying

on the privilege of a domestic corporation to exercise its franchise and the privilege of a foreign corporation to do business in the state from November 1, 1944 to the end of the corporation's first fiscal year ending after that date. This "transition privilege period" would be one month for a corporation with a fiscal year ending November 30, 1944, and would range up to a full twelve months for one with a fiscal year ending October 31, 1945. For a corporation reporting on a calendar year basis, the "transition privilege period" would be two months.

The tax *for* this "transition privilege period" will be *on* the income of the two or three years left uncovered by the present franchise tax and the tax as revised. The two or three years' income will not be lumped into a single figure and taxed on the lumped amount. Each year's income will be treated as a separate item. A separate report on it will be made on the regular May 15th reporting date (or four months after the close of the fiscal year for corporations with fiscal years ending in March, April, May and June) as at present, and the sequence of tax payments will continue as at present.

These relationships are shown in Diagram 3.

A special adjustment has to be made for liability dates under this transition tax. For most corporations the liability date for the tax on the first year's income under this tax (for the taxes on the first two year's incomes for corporations with fiscal years ending in July, August, September and October) will be November 1, 1944. Liability for the second year's tax for most corporations (for the third year's tax for the corporations noted above) will accrue at the close of their fiscal years after November 1, 1944. Thus this transition tax will effect the change-over of liability dates, as well as of privilege periods, from the present tax to the revised tax.

* * *

Note how smoothly, without any financial jolt, this tax change will be made. The tax return dates continue in an unbroken sequence from the present law through to the revised law. Tax payments likewise continue in an unbroken sequence, with no gap in tax payments and with no additional tax payments inserted anywhere. The chronology of this transition for a calendar year corporation is shown in the following table:

Tax	Report Date	Calendar Income Year	Privilege Period—Beginning	Privilege Period—Ending	Liability Date
Present	5/15/43	1942	11/1/43	10/31/44	11/ 1/43
Transition	5/15/44	1943	11/1/44	12/31/44	11/ 1/44
Transition	5/15/45	1944	11/1/44	12/31/44	12/31/44
Revised	5/15/46	1945	1/1/45	12/31/45	12/31/45

A graphic illustration of this continuity of dovetailing taxes is presented in Diagram 4.

While no corporation continuing in business will have to pay one cent more of state tax as a consequence of this tax reform, it will have an effect on the financial position of corporations that should be of sharp interest to accountants. Because of the shifting of liability dates under the transition tax, two years' tax liability (in some cases three years' liability) will accrue during a corporation's fiscal year beginning on or

before November 1, 1944 and ending after that date. For most corporations this will involve the posting of an additional liability item. For the remaining minority it will mean the disappearance of an item of "prepaid taxes" from their asset schedule (for this is how the present tax affects the balance sheets of corporations with fiscal years ending in August, September and October).

Should the provisions of the federal corporation income tax law as to deductibility of state taxes remain unchanged, this will not be an unmixed evil. For corporations reporting on an accrual basis, such additional state tax liability will be a deductible item in calculating taxable income for federal taxation. The corporations' federal taxes on 1944 or 1945 income will be reduced accordingly. With the federal corporation income and excess profits tax rates that may be expected for 1945 and 1946, a reduced corporation income almost comes within the category of blessings. With no additional tax payments to be made to New York, each corporation's federal tax payment will be reduced in 1945 or 1946.

* * *

It may be asked why two tax changes—the proposed dissolution and withdrawal tax and the proposed change in the privilege basis of the franchise tax—are needed to accomplish a reform that would apparently be accomplished by either one separately. The answer is that neither change, by itself, achieves the full range of objectives at which we are aiming.

The dissolution and withdrawal tax by itself would plug the leak caused by dissolutions and withdrawals prior to the beginning of a fiscal year, but would leave all the accounting distortions under the present system of tax liability. There would still remain nonconformity in liability accrual as between the federal and the state taxes.

The change in the privilege base of the tax, by itself, would cure the anomalies of the present tax and bring it into conformity with the federal levy, but would leave a loophole for withdrawal and dissolution from the date of the passage of the tax bill to November 1, 1944.

Taken together, the two measures not only dovetail as to the scope of reform covered, but each mutually adds to the constitutional strength of the other. Until dissolution or withdrawal, no corporation sustains any additional tax burden under the change of privilege base that would provide basis for a suit opposing the tax. And after dissolution or withdrawal, there would be no percentage in seeking to test the law changing the privilege period since, should the courts not sustain that measure, the corporation would become as fully liable under the dissolution and withdrawal tax.

Until November 1, 1944, the dissolution and withdrawal tax will play an active role, and will bring in its quota of tax yield. After that date its role will be passive. It will stay on the statute book simply as a latent bulwark for the privilege period provisions of the franchise tax.

DIAGRAM 1
STATUS OF 9-A TAX PAYMENT, SPRING 1944

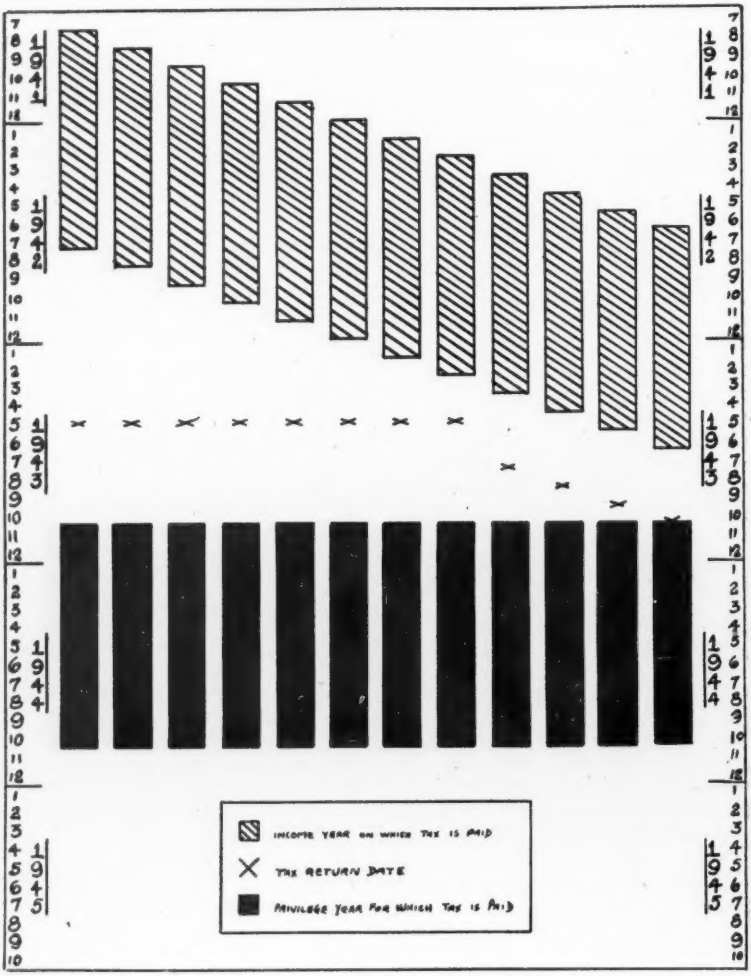


DIAGRAM 2
STATUS OF 9-A TAX LIABILITY UNDER PROPOSED LAW, AS OF SPRING 1944

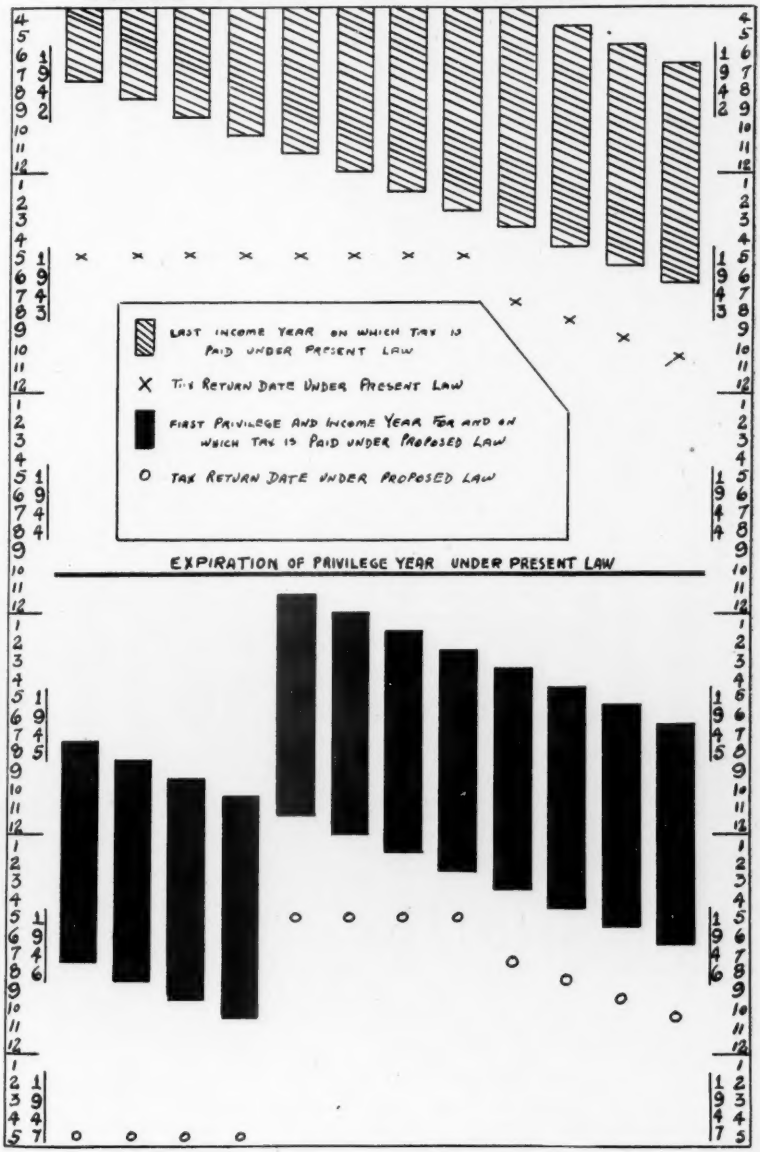


DIAGRAM 3
STATUS OF INTERIM 9-A TAX PAYMENTS

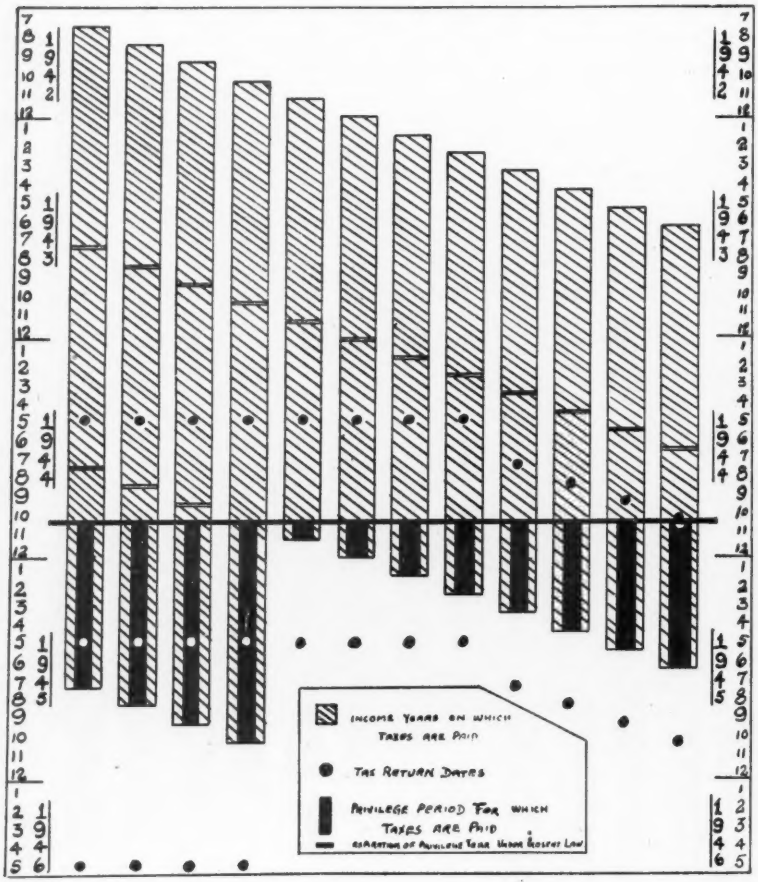
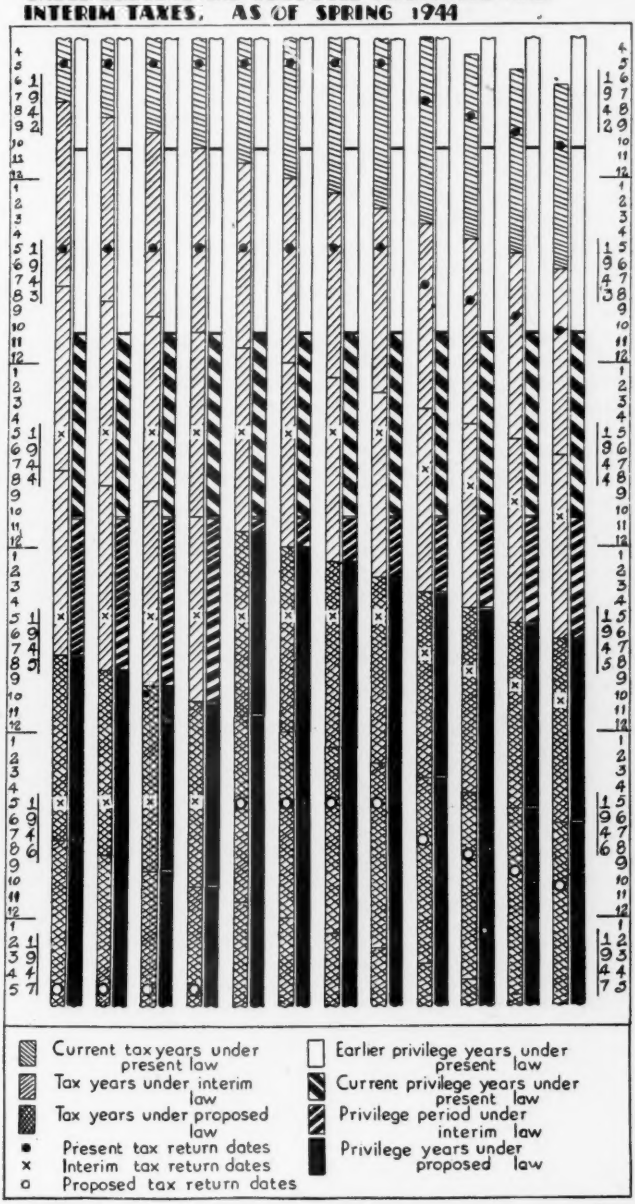


DIAGRAM 4

INTERLOCKING OF PRIVILEGE AND TAX LIABILITY UNDER PRESENT AND PROPOSED FRANCHISE AND INTERIM TAXES, AS OF SPRING 1944



Members are urged to submit questions on Wage and Salary Stabilization to the Committee on Wartime Economic Controls. Efforts will be made to obtain prompt and official answers to these questions. From time to time, the questions and answers will be published for the benefit of the members of the Society.

Wage and Salary Stabilization Questions and Answers

On December 9, 1943 the Society's Committee on Wartime Economic Controls conducted a technical meeting on Wage and Salary Stabilization. The meeting was confined to the answer of questions submitted by members of the Society. The panel of experts consisted of:

C. A. Pearce of the National War Labor Board

Richard H. Krieger of Prentice-Hall, Inc.

Burton A. Zorn of Proskauer, Rose, Goetz & Mendelsohn

William Mac Donald of Research Institute of America

In this issue of the Certified Public Accountant, there are presented the questions answered by Messrs. Pearce and Krieger. The balance of the proceedings will be published in a subsequent issue. Benjamin Greenberg, chairman of the Committee on Wartime Economic Controls presided. He was ably assisted in the conduct of the meeting by Franklin C. Ellis, a member of the Committee. The other members of the Committee contributed to the success of the meeting by their constructive suggestions, advice and effort in the preparatory stages.

Questions Answered by Mr. Pearce

1. **Question:** Explain the distinction between rate schedules, rate ranges, and a plan of salary adjustments.

In the absence of a plan of salary adjustments (assuming that rate ranges exist for certain positions) is it permissible to make any increases whatsoever without approval except pursuant to General Order 31? In other words, does General Order 31 establish the rules of procedure which must be complied with if an increase is given without approval? Are there any circumstances under which the increases can be given without regard to the provisions of General Order 31?

Answer: I think that that almost calls for a speech, or at least an outline of the wage stabilization policy which has been established by the National War Labor Board.

General Order 31 has about everything under the sun in it, and I think it makes reference to a good area of the wage stabilization policy. It may be helpful, by way of background to review briefly some of the outstanding principles which govern our action over at the Regional Board

The wage stabilization program was established, as you know, by an act of Congress on October 2, 1942. Its effect was to freeze wages and salaries at the level of September 15. It was a freezing act, and the Congress contemplated that wages would stay at that level except in certain rare and unusual situations.

It mentioned three of them in that act.

In the first place, Congress said in effect that the War Labor Board might approve adjustments up to 15% of January, 1941 earnings. It also said that the War Labor Board might approve adjustments to correct substandards of living. Finally, it said that the War Labor Board might approve adjustments to correct gross inequities and manifest injustices.

It was probably the original idea that all wage adjustments would have to have Board approval. Very shortly the War Labor Board found that there were certain types of wages and salary adjustments that were made in the ordinary course of business which it didn't want to be bothered with, which were not essentially inflationary in character, in which the employer should be able to go ahead without coming to the Board. As a result, certain general orders were issued by the Board which, briefly, allowed an employer who had an established plan of merit adjustments and promotions to go ahead in accordance with that plan. In other words, it almost immediately established a category of wage and salary adjustments which did not require Board approval.

General Orders 5 and 9, which covered these subjects, were not too clearly conceived and caused a lot of difficulty. The result was that last summer General Order 31 was issued which attempted to clarify the whole question of the types of individual wage and salary adjustment that might be made without War Labor Board approval. I will attempt to outline what General Order 31 says, to the extent the interpretation of it has been made clear by the Board.

General Order 31 says that an employer may make adjustments for merit and length of service without coming to the Board if he has two things: first, a schedule of rate ranges; and, second, a plan for making adjustments within rate ranges, and as between jobs. It says that an employer has a rate range for a job classification if that job classification is limited to work of a similar skill, duties and responsibilities. It says that an employer has a rate range for that job if he has a clearly designated minimum and maximum.

A rate range exists, if it was in effect prior to the stabilization date, which was October 2, 1942, or, if subsequent to that date, the War Labor Board approved the rate range. So first the employer, according to General Order 31, must have a properly established rate range. But he must have more than that; he can't go ahead and make any kind of an adjustment he sees fit within that rate range, he must have a plan for making merit or length of adjustments. That plan contemplates that the employer, in the case of merit adjustments, have some systematic program for reviewing the accomplishments of his employees during the year; that he actually studies the work they have done and determines which ones merit the increases and which ones don't. It contemplates there are certain limitations as to the amount of increases: that is, limitations other than at the top of the range. It contemplates furthermore that the plan was in effect prior to the stabilization date (that was October 2, 1942) or, if not in effect, had been approved by the Board subsequent to that time.

If those conditions are fulfilled, both as to the rate ranges and the plan of progression, the employer may go ahead and make adjustments for merit or length of service. If the employer has a rate range but not a plan of progression, he still doesn't have to come to us unnecessarily for approval; he may adopt the provision in General Order 31 which allows him to make adjustments for merit or length of service which do not ex-

ceed ten cents per hour for any employee or two-thirds of the range, whichever is greater, providing that the total amount of the adjustments during the year for all the employees covered by the plan does not exceed an average increase of five cents per straight-time hour.

Now that particular provision may be interpreted in several ways. I think I will wait on questions that may arise later, in case you have specific interest in that particular provision; but it does mean that employers may make adjustments for merit and length of service without coming to the Board if they have properly established rate ranges, if they have had established prior to the stabilization date a plan of progression, or even though they did not have such a plan of progression, they stay within this five-and ten-cent limitation set forth in General Order 31.

General Order 31 also allows the employer to make promotions from one job to another, the only limitation being that a man will not be given a rate which exceeds the minimum of the job to which he is promoted or 15% of his former rate, whichever is higher.

Those are the types of adjustments, in the main, that do not require War Labor Board approval. All other adjustments, generally speaking, do require War Labor Board approval and the Board handles requests for such adjustments under one or more of three principles. The first is the so called "maladjustment" principle, which is synonymous with the "Little Steel" Formula, and which as I said before, allows the employer, with Board approval, to make a general wage adjustment which will bring the aggregate of general wage adjustments since January, 1941 to an amount not in excess of 15% of the average straight-time earnings in January, 1941.

The Board has insisted that, in applying that principle, we use an over-all basis; that is, it frowns upon its application to single individuals or single job classifications. It sees it as an adjustment to correct for higher cost of living and feels everyone is entitled to the same adjustment.

In the second place, the Board will approve adjustments if it is convinced that the level of wages is substandard; and it recently has clarified what it means by "substandard" by allowing the various regional offices to approve up to fifty cents an hour. The New York Board has for some time automatically approved fifty cents an hour on the basis of substandards.

The third principle, that of gross inequities or manifest injustice, was not "spelled out" by the Board in the early days. It has caused us a lot of "headaches" because more applications come in on this basis than on any other, by far. We did not know what a gross inequity was and, even if we had known, we didn't have sufficient wage data to measure whether or not it existed. As the result, during the first few months of our operation we were generally dependent on the data submitted by the applicants. He usually pointed to one or two other companies generally doing the same thing in the area, stating that their wages were higher and therefore a manifest injustice existed.

The result was, that on April 8, 1943, the President issued a new executive order which deprived the Board of the right of approving wage adjustments on the ground of gross inequity. That closed about 70% or 80% of our cases, and, of course, the pressure from employers harrassed by manpower problems and the pressure from unions was great. Six weeks later Justice Byrnes issued a directive partially restoring our authority to approve wage adjustments on the basis of

gross inequity. He did it by establishing a fairly definite standard for judging whether or not a gross inequity existed. That standard was the so-called "goingrate", or rather the minimum of the brackets of sound and tested rates. That concept itself needed a considerable amount of clarification; we have been trying to do that ever since; but the result was that this regional office, together with all others, through the cooperation of the Bureau of Labor Statistics, has established what in effect are wage ceilings for the principal industries and occupations and areas in this region, and our test is whether or not the wage adjustment comes within the ceilings that we have established.

These three types of adjustments represent in the main those that require Board approval. They are general wage increases. In addition, we have a number of what we call "Fringe Questions" relating to such matters as vacation plans, holidays, night-shift premiums, and right now of course the year-end and Christmas bonus problem.

I don't know whether that answered the question that was originally put to me, Mr. Chairman.

Chairman: It was necessary for Mr. Pearce to go to the length that he did in answering the question so to lay the proper foundation for many other questions that will follow and to give you the general approach that the War Labor Board is following today; at the same time Mr. Pearce has already answered several of the other questions.

2. **Question:** Please outline generally under what circumstances increases can be granted without approval in respect to bonuses.

Answer: I assume that at least some understand that the policy of the War Labor Board with respect to bonuses differs from that of the Treasury. We haven't been able to reconcile our differences and I don't know whether or not they are reconcilable.

Our Board has stated a fairly specific policy with respect to Christmas and other forms of year-end bonuses. I might state now that it will not approve an increase in bonus to correct for maladjustments, i.e., cost of living, to correct for substandards, to correct for gross inequities, to aid in and effect prosecution of the war; will not approve bonuses just because the employee has worked harder during the year or assumed additional responsibilities. In general its policy is this: that an employer who proposes to give an increase in the amount of bonus to any individual over that given in 1942 must come to us for approval; if he had a plan that was set up in terms of a ration to payroll or profit, or some other such basis, and intends to increase that ration, he must come to us for approval. In other words, he does not have to come to us for approval if he proposes merely to continue the plan he had last year and does not propose to give bonuses in greater amount than he did last year.

The one exception to the statement I made before: the Board will, in what it says are "rare and exceptional cases", approve an increase in bonus where not to do so would create or cause a gross inequity; and our Board has attempted to publicize the fact that only in rare and exceptional cases will it approve increases in bonuses on that ground. I think the most common situation of that type is where, for one reason or another, the employer in 1942 overlooked or did not make bonus payments to certain groups of individuals in his plant and this year merely proposes to give them the same bonus as other employees doing the same type of work or who have served the same time in the plant.

Chairman: Are there any observations that any of the other members of the board of experts or any member in the audience wants to make on the questions Mr. Pearce attempted to answer? I think he covered fairly completely the War Labor Board policy on salary and bonus increases.

3. **Question:** Must the ranges of the plan be limited to the salaries that were in effect on October 21, 1942, or could the plan provide for ranges in salaries higher than those paid on October 2, 1942?

Answer: Of course the rate ranges may be higher than those of October, 1942, if they have been approved by the Board.

Our general attitude on that matter is this: we will allow (consider as established) the minimum and maximum rates that were actually paid on or immediately prior to October, 1942. However, if the employer had a well established plan that he can show us in writing which called for higher minima or maxima, we will go along with that. He may not, however, in the absence of such a written plan, reach back a year or two years to pick out a minimum and maximum and give them a wider spread or higher level.

4. **Question:** Mr. Pearce stated that bonuses will be permitted such as were paid in 1942. Let us say no bonus was paid in 1941 and no approval was obtained for one paid in 1942, but bonuses were paid in 1942. Will bonuses be permitted at the same rate as those paid in 1942?

Answer: No.

5. **Question:** This is a question pertaining to a case where an application was submitted to the War Labor Board for an increase in bonuses, at the end of December, 1942; approval was granted at the end of January, 1943. In the meantime the employer paid the bonuses in December, 1942, at the same rate as 1941. Question: Is the employer permitted to pay the balance of the unpaid bonuses and is he permitted to pay bonuses this year (1943) at the increased rate, or is he permitted to do either one of those, or must he get approval?

Answer: Well, yes, in my opinion he could do both. My attorneys might differ from me!

6. **Question:** An accounting firm has no schedule or plan. How does it determine the maximum and minimum which it can pay to a new employee for: (a) an existing position previously filled by another employee; (b) a newly-created position?

Answer: Well, as to the employee who is going to move into a job which already exists, the employer could pay the rate which he has established for that job or, if there is no incumbent in that job at present, he can pay the rate which he paid when he did have an incumbent, provided it is an established rate.

The question of a newly created position, where he has no rate, comes under General Order 6, which permits the employer, where all he is doing is creating a single job or creating single jobs and not a new department, to establish for that job a rate which bears the same relationship to prevailing rates for that job in the area as existing rates for his existing jobs bear to rates prevailing for those jobs in the area.

That is rather involved. I think there are actually few employers who can make a sound determination on that point. My personal advice would be for the employer, in creating a new job, to come to the War Labor Board to get approval for the rate that he proposes.

7. **Question:** An accounting firm has rate ranges and a plan. How

does it determine the maximum and minimum which it can pay to a new employee for: (a) an existing position previously filled by another employee. I think that is easily answered, and (b) a newly-created position?

Would your answer be the same if a plan existed whereas previously no plan existed?

Answer: No, sir.

8. **Question:** Why does the War Labor Board rate a job rather than the individual who is in the job? You may get a very good man for a job and the previous employee was not so good. What is the principle behind rating the job rather than the individual who occupies it?

I know of an application sent in for a top bookkeeper and the additional question was asked: What are the special qualifications of this bookkeeper for whom you want an increase?

Answer: I assume in that particular case there is no way to get an adjustment for the bookkeeper except under the going wage bracket. The question we had to answer is whether the particular bookkeeper met the standards we had established for bookkeepers. Frequently we have to go back and find out whether the work done by the particular individual corresponds to that for which we have established rates.

9. **Question:** Supose you were to put a very good man in a bookkeeper's job. To get that man you pay a higher wage than the ordinary bookkeeper gets. If you are going to limit it to rating that job, you can't get enough money to pay for a real good man for the particular job.

Answer: If a certified public accountant is going to do the work of a bookkeeper, he can't be paid more than the rate we have established for bookkeepers. If he is going to do work of more skill, we have to arrange for some differential above that rate.

10. **Question:** Is there any existing method whereby you could find out the prevailing wage rates for similar jobs for similar firms in your area?

Answer: The only way we have been able to find out is by setting up a very large office in the Bureau of Labor Statistics consisting of somewhere from fifty to one hundred field agents who spent many months on the job and made prevailing rate studies in many industries. We had very little idea prior to that time what the prevailing rates for particular jobs in particular areas were. I don't know that we know now. But we have a body of data from the BLS on which we have set some brackets.

I agree that for most industries and occupations it would be an almost impossible task for a single employer to undertake.

Chairman: Does anyone want to answer for the Treasury Department as to the availability of comparable data?

Mr. MacDonald (of Research Institute of America): The available statistics which the War Labor Board has used are limited to wage-earning employees. There are no records for salaried employees. The Treasury has no rates and I don't expect they ever will.

11. **Question:** Mr. Chairman, in the metal trades industry there has been approved rate wage schedule promulgated by the War Labor Board. Now if an employee in one of the groups of classifications has been paid, say, 60¢ an hour, and the minimum for that classification is 80¢ and the maximum $1.10, may

the employer, immediately upon receiving approval, increase the rate that he has paid to the minimum of that classification?

Answer: We have approved a rate range of 80¢ to $1.10, 80¢ being the minimum. By virtue of that approval, every person in that job may be brought up to 80¢.

12. **Question:** Where an employer gives an unauthorized increase in salary or bonus, may such violation be cured within the same year by a refund from the employee to the employer of the unauthorized portion?

If the refund is made in a subsequent year will this cure the violation?

If this procedure does not cure the violation, is there any other way in which the employer may cure the violation short of suffering the penalty?

Answer: Simply to make the refund will not cure the violation. The War Labor Board will have to find that the violation was made in good faith. The fact that the employer did make the refund would be evidence of good faith which the Board would consider. But the refund alone would not be a sufficient cure for the violation.

13. **Question:** How does a concern which started in business after October 3, 1942, determine the salary rates which it can pay for each position, particularly to its executives?

Answer: The employer must get the approval of the Board to establish rates for new plants or new departments of existing plants. Prior to the recent amendment of General Order 6, the employer could set rates in accordance with the prevailing rate for similar work in the area without Board approval. He no longer has that right; he must come to the Board.

14. **Question:** At one time, as I understood it, the War Labor Board had a ruling in the effect that, regardless of the number of employees in the service of an employer—even if there were eight or less—if there were more than eight adjustments during the year, then the employer would be covered by the wage and salary regulations.

Answer: The exemption granted by General Order 4 shall not apply to an employer who, during any given year following October 3, 1942 in the case of wages or October 27 in the case of salaries, has made adjustment affecting eight specific employees.

That is the provision of General Order 4 as amended.

15. **Question:** Explain the "going rates" promulgated by the War Labor Board. For what industries or positions have such rates been promulgated? What is the significance of these rates to (a) an employer and (b) the War Labor Board?

Answer: Briefly, the so-called "going rates" are the wage ceilings that the Board has established under the May 12th directive of Justice Byrnes. The minimum of the going wage bracket is set at a point somewhere below what we find to be the average rate for the occupation in the area. We have a rule-of-thumb which indicates a rate somewhere around 10% below the weighted average.

We don't follow that in all cases, but the going rate, so-called, is set somewhere below what we find to be the average rate paid for the work in the industry and in the area, and it is significant to us and to the employer as a ceiling for wage adjustments. The employer does have

to come to us for approval to increase rates to that level.

We have officially set rates for these industries: building service employees in the metropolitan area; bus operators in the metropolitan area; foundries in the metropolitan area in Buffalo; the metals and machineries industries, which we separate into some 150 occupations for all areas in this region: New York and Northern New Jersey; paper and pulp for the entire region; office and clerical workers for the entire region except Buffalo; wholesaling in the metropolitan area; brokerage, cafeterias, chemicals: all in the metropolitan area; printing, metropolitan area; cleaning and dyeing, stationary engineers, paper boxes: those also for the metropolitan area.

In addition, the Board has tentatively set rates for several other industries which it is trying out and has not yet officially promulgated.

Chairman: Mr. Pearce, do I understand these are available to the public?

Answer: Yes, those in the first list are available.

16. **Question:** The Society recently published a bulletin showing the going wage brackets for office employees in the metropolitan area. Is approval necessary within those rates?

Answer: Approval is necessary to adjust rates up to the level set.

Question: Those rates were established by the War Labor Board. Do you have to have approval in that case?

Answer: Yes, you have to have approval.

17. **Question:** Explain the difference between (a) merit increase, (b) length of service increase, (c) promotion increase, and (d) other types of increases specified in the War Labor Board regulations.

Under present wartime conditions, many people are working harder, longer hours, etc.; as they move along from day to day, they do better work and become more experienced in their duties. What description would be given to an increase proposed to be given to an employee under these circumstances.

Answer: I touched on at least the first part of the question before.

A merit increase is given in recognition of the accomplishments of the individual, his productiveness and skill he brings to the job. Length of service is usually an automatic proposition. He gets an adjustment after he has served a certain period of time with the employer; promotions, as he changes from one job classification to another one—I suppose it is always a shift from a lower-paying classification to a higher paying classification. Those are all types of adjustments that may be made without Board approval, provided they meet the terms of General Order 31, as has already been explained.

The second part of the question, refers to adjustments that might be made in recognition of the greater volume of work being done by the employee. That is a general situation we find now. We ordinarily do not grant wage adjustments because of that factor alone; however, the employer can make an adjustment in recognition of that fact if the particular employee stands out above the others—is doing more work, bringing more skill to the job—providing the adjustment is made within established rate ranges consistent with General Order 31. Otherwise he must come to us for our approval. We will approve if the adjustment proposed is within the bracket we have established for that job.

18. **Question:** The War Labor Board limits a fixed bonus to the amount paid in 1942. In the case of a concern on an accrual basis, an employee was given a year-end bonus of $100 on an accrual basis, and it was set up as an expense for 1942. Can this bonus be used as a basis for a bonus to be paid this employee in 1943?

Answer: My interpretation would be that he couldn't give more than $100 in '43.

19. **Question:** The "A" Company engages employees in one category and pays from $36 to $42 a week, depending on experience and length of service. On January 15, 1942, there was but one employee who received $42; all the others received lesser amounts. On that date the employee who received $42 a week left the employ of the company. On October 3, 1942, there was no employee who received $42 a week.

When the other employees reach the required experience can they be paid the previously ascertained scale of $42?

Answer: We do consider situations like that. If the employee was drafted in June of 1942 and it was clear he had been paid that rate, we would consider that as the maximum for that job to which employees could be promoted on merit or length of service.

20. **Question:** In reclassification does this involve movement to a new machine or location, or can workmen still perform on the same machine and location using greater skill with close degree of tolerance?

Answer: Yes. In most occupations we recognize two or three grades. We would consider a movement from C to B or B to A as a reclassification.

21. **Question:** The question there doesn't necessarily mean movement to a different machine or having the individual promoted from a Classification B to a Classification A operate on the same machine.

Chairman: I would say it involves operation of the same machine but with different tolerances.

Questions Answered by Mr. Krieger

Chairman: Several of the questions which follow are along the same lines; therefore I will read a few of them and then ask Mr. Krieger to try to give one answer for all.

22. **Question:** A corporation has a contract with two officers and a manager. The contract provides that 80% of the profit before taxes is to be distributed to the officers, who are also stockholders, and the manager, who is not a stockholder. An original contract, dated in 1937, was superseded by a contract dated May, 1941, which incorporates this clause. The salary of the manager and one of the stockholders is $11,500 per year. In view of the capital structure of the corporation, it was unable in prior years to comply with the provision about the distribution of profits. The corporation is now in a more favorable position and would like to exercise this provision.

Is it necessary to apply for permission to pay the share of profits, or can it be done without permission?

23. A corporation has an agreement with its officers and some of its employees whereby it should distribute a certain percentage of its profit before taxes. In prior years only a fraction of the percentages was taken out, because of a previous deficit existing on the books. Can the corporation at this time pay the percentages of the profit without getting permission, or has it waived this right because it never exercised it in full in prior years?

A fixed amount each year was withdrawn by these employees, but at no time did this fixed amount reach the percentage provided for in the contract.

24. For the calendar year 1941 the salaries of three individuals, executives of a corporation, were $125 per week. In 1942 these executives drew $75 a week, because funds were not available to pay the previous year's salaries. In 1943 these executives drew $100 a week. Is it necessary to request permission for the increase from $75 to $100 per week, or is permission not necessary because the salaries for 1943 were less than they were in 1941?

Now it may be, Mr. Krieger, that the last question was slightly different from the other two.

Answer: Before we go into that, I want to point out that payments under the Treasury, based on a certain percentage of profit, are controlled this year, at any rate, by three of the four conditions based on the Treasury Department regulations on bonuses. I will tell you what those limitations are so you will know what the answer is going to be. Remember, this would apply to bonuses and payments based on percentage of profits.

There are two principal conditions (1) Where the employee has not received an increase in his base salary since October 3 or October 27, 1942, as the case may be. If that is the case, if he has received no increase since October 3rd or 27th, he may receive a bonus payment which is the greater of either of these two amounts: either the dollar amount paid in the employer's last accounting year (either calendar or fiscal) ending prior to October 3, 1943, or the amount paid, permitted by the regulations, in the first accounting year after October 3, if this amount does not exceed 50% of the annual base pay. That would apply to a percentage of profits. If the amount in '41 is the same as the amount in '42, and if he has not received an increase in pay he can continue to pay it. If he received a greater payment in '42 legally within the regulations and it does not exceed 50% of his base pay which has remained unchanged, it's all right.

Condition #2 is where the employee has received a salary increase since October 3, 1942, or October 27, as the case may be. If such increase has been received, the payment may not exceed the amount paid in the first accounting year after October 3, 1942, provided it does not exceed 20% of the current base pay: that is, 20% of the increased salary.

The other condition which would also apply to bonuses as well as percentage of profits payments is the cost-of-living type which permits the payment if the total salary after the receipt of the bonus or the percentage of profits payment does not result in a total payment exceeding 15% of a salary in existence on January 1, 1941 up to $2400; 10% of a salary over $2400 and up to $4000; and 5% over $4000 to $7500.

There is one more condition on bonuses which does not apply to percentage of profits payments and that is bonuses based on percentage of salary. They may be continued without aproval if the percentage has not been changed since October 3 or October 27. In other words, if the man has received an increased salary but his percentage of bonus remains the same, you can continue to pay the bonus even though it be of a larger amount.

Now to refer to the two first specific questions. The first one says they did not receive any percentage of profits payments up until this year. Therefore, approval would be necessary. It might be obtained because of the existence of agreement. You have an arguing point there.

But don't do it without getting approval first, despite the agreement.

The second question says only small percentages were taken out. Well, that would depend on how much those small percentages were. If a small percentage was taken out in 1941, and a larger percentage in '42 which does not exceed 50% of the base pay (and the larger percentages in '42 were legally taken out), you can pay the greater amount. To pay anything higher you'd need aproval despite the agreement, although the existence of the agreement gives you an arguing point which you should submit when you request approval.

The other question is a little bit different. It says they receive $125 in '41, $75 in '42 and $100 in '43. Well, I would say you would need approval for the $100 in '43 because you have gone down; and to get back again you are increasing what the man is earning. I wouldn't do it without approval.

Chairman: Mr. Zorn, did you have some observation on the remarks of Mr. Krieger?

Mr. Zorn (of Proskauer, Rose, Goetz & Mendelsohn, attorneys) Yes, I'd like to ask Mr. Krieger a question which has been troubling me. It relates to the first question.

It is perfectly clear that the percentage of profit, which in essence constitutes a year-end bonus, if it is in a greater amount except for those exceptions in the new regulations must receive approval. Now I have felt—and haven't been able to get a satisfactory answer, although I think Mr. Kreiger has indicated what he thinks the answer is—but suppose back in 1941 or 1940 a firm entered into an agreement to pay an employee a small base salary and a participation in profits, and it is perfectly clear that that participation in profits is an integral part of the salary arrangement, not intended as a bonus or gift at the end of the year but is part of a man's salary; or, in another case similar to it, where a man's entire compensation is put on a percentage of profit basis. Now it has been my view all along, where you have that type of situation and have definite contracts entered in to prior to the stabilization program, that the payment of an additional amount based upon greater profits is in no way a salary increase and should not be controlled by anything in the regulations because, in essence, the man is not getting an increase in his salary rate.

What I want to ask Mr. Krieger is whether he thinks there is anything to the thought that where you have a situation of that kind it is distinguishable where customarily and without contract it has been the custom of a firm to hand out a percentage of profits in the form of a year-end bonus?

Mr. Krieger: I agree with Mr. Zorn there is a definite distinction between the two. Where you draw the line I don't think anybody could stand up here and say. I would say if the man's total compensation is based on a percentage of profit, all factors of that kind would enter into the situation; and I frankly can't give you the definite answer. Maybe Mr. MacDonald can give you his views. (Laughter). It's not as funny as it sounds: "Treasury Departments" are hard to answer because they handle a peculiar type of employee. The War Labor Board doesn't have such problems because no man working on a machine gets paid like that. But there it is. If he gets nothing but a percentage of profits, I would be inclined—on the justice and equity of the situation—to agree with Mr. Zorn. If a man was getting more and more each year, I'd get my agreement O.K'ed and be covered or write the Treasury a letter and say, "Is this O. K. to continue?" I wouldn't take any chances that way,

particularly in these war years. If a man is going to get larger amounts where profits are going up tremendously where a man doubles and triples his pay I would certainly want to get an O. K before I paid it out.

25. **Question:** A corporation on January 7 votes bonuses to all employees who have stayed with the firm the entire year. The bonuses are to be paid at September 30th. At that time it has seven employees. As of December 31st it has nine employees. Can it pay those bonuses?

Answer: It would depend on jurisdiction. The War Labor Board says you determine your number of employees as of the time the increase is agreed to. If it was agreed to at the time there were seven, it would be O. K. to pay.

The Treasury specifically says "at the time the increase takes effect", so you couldn't do it under Treasury.

Mr. MacDonald: I disagree—If it was money authorized to be paid, you are covered under the definition of "salary payments".

26. **Question:** Which date or year is the basis for determining the increase in salaries? Is it the calendar year 1941, or is it October 3, 1942?

Answer: Well, so far as the Treasury goes, the beginning of the stabilization starts on October 3 or October 27, 1942, as the case may be, for salary payments. If you have got approval of an increase since that date, the approved salary is then the one that you are operating under and to increase that amount from that time on would require approval again.

The only time you worry about base year is when you are considering extra payments like bonuses. But stabilization fixes the rates that were paid as of October 3 or October 27, 1942. Likewise with the War Labor Board; the situation is the same.

27. **Question:** Would one of the speakers care to amplify the report that the Treasury might consider bonuses up to 50% of the salary? Some information or comment will be appreciated.

Answer: The 50% is one of the alternative amounts that may be paid as a bonus if the base pay of the man has not been increased. You can pay what you paid in '41 or '42 provided the latter doesn't exceed 50% of the base pay. You have the alternative of the larger of those two amounts.

Now the question may arise: If you didn't pay a bonus before, would the Treasury consider a bonus now? I can say pretty confidently they wouldn't, unless the man was getting something like $1,000.

28. **Question:** Didn't the Treasury Department rescind their order on the commission to salesmen if the commission was in excess of the amount paid in prior years provided the rate was the same? Wasn't that ruling postponed until the end of the calendar year?

Answer: That's right—that is, if any base pay received has not been changed. What they are going to do next year we don't know.

29. **Question:** Where an employer has eight or more employees two months of the year—say June and July—and the rest of the year he has less than eight, would a bonus, say, at this time of the year—in December—be construed as an increase of wages for the entire year and be disallowed for the two months?

Answer: No. You have less than eight.

Authors of Articles In This Issue

ROLLIN BROWNE, author of **"Review of the Tax System of the State of New York and Proposals for a Revision"**, is President of the New York State Tax Commission.

SPENCER BATES, author of **"Proposed Changes in Allocation Procedure Under the Corporation Franchise Tax"**, is Deputy Commissioner of the New York State Tax Commission.

ROY H. PALMER, author of **"The Personal Income Tax Law"**, is Deputy Commissioner of the New York State Tax Commission.

WILLIAM J. SCHULTZ, author of **"Modification of the Privilege Period Base of the Corporation Franchise Tax"**, is Research Consultant of the New York State Tax Commission.

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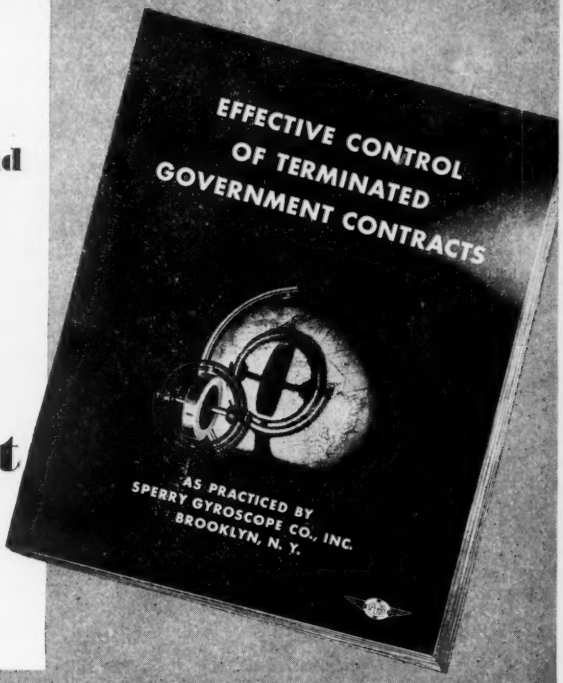

The Effective Control of Terminated Government Contracts is a matter of primary importance to the manufacturer or other supplier in these days of business transition. Through the courtesy of officials of the Sperry Gyroscope Company, Inc., we are able to offer you a most helpful brochure, just prepared, on this subject. In this brochure are described in detail the outstandingly successful methods and routines used by Sperry in negotiating settlement on terminated government contracts. We shall gladly send a copy of this booklet to you and to any other company executives you may designate. No obligation is entailed. Write, phone or wire our nearest Branch Office.

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SURE, that Saturday night pay envelope's bulging. But let me tell you something, brother, before you spend a dime . . . *That, money's mine too!*

I can take it. The mess out here. And missing my wife and kid.

What I *can't* take is you making it tougher for me. Or my widow, if that's how it goes. And, brother, it *will* make it tough—if you splurge one dime tonight.

You're working . . . and *I'm fighting* . . . for the same thing. But *you* could lose it for both of us—without thinking. A guy like you could start bidding me right out of the picture tonight. And my wife and kid. There not being as much as everybody'd like to buy—and you having more green stuff than I. But remember this, brother—everything you buy helps to send prices kiting. Up. UP. AND UP. Till that fat pay envelope can't buy you a square meal.

Stop spending. For yourself. *Your* kids. And mine. That, brother, is sense. Not sacrifice.

Know what I'd do with that dough . . . if I'd the luck to have it?

I'd buy War Bonds—and, God, would *I* hang on to them! (Bonds buy guns—and give you four bucks for your three!) . . . I'd pay back that insurance loan from when Mollie had the baby . . . I'd pony up for taxes cheerfully (knowing they're the cheapest way to pay for this war) . . . I'd sock some in the savings bank, while I could . . . I'd lift a load off my mind with more life insurance.

And I wouldn't buy a shoelace till I'd looked myself square in the eye and knew I couldn't do without. (You g to knowin'—out here—wh you can do without.)

I wouldn't try to profit fro this war—and I wouldn't a more for anything I had to se

I've got your future in m rifle hand, brother. But you' got both of ours, in the insi of that stuffed-up envelop You and all the other gu that are lookin' at the Ma Street shops tonight.

Squeeze that money, brothe It's got blood on it!

Use it up
Wear it out
Make it do
Or do without

HEL US KEE

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